

REMARKS

Claim 1 has been rejected under 35 USC 102(e) as anticipated by Lepitre; and claims 2 and 4 have been rejected under 35 USC 103(a) as unpatentable over Lepitre in view of Brothers. The rejections are respectfully traversed.

In response to Applicant's arguments filed April 19, 2005, the Examiner states that "Lepitre teaches the limitation of determining and storing at least one transmission method (carrier frequency) with at least one transmission speed (symbol rate) that represents a maximum data throughput rate (dmax) by defining and a list of maximum transmission rates (dmax) as a function of the symbol rate and the high or low carrier frequency (Col. 1, Lines 35-43; Col. 2, Lines 66-67; Col. 3, Lines 1-30)." Applicant's respectfully disagree.

Lepitre teaches defining, for each of the end devices used in the communication system, a plurality of rates which are compatible with the transmission quality as a function of a symbol rate and a carrier frequency. As noted in the previously filed response, this is not equivalent to a determination of different transmission methods, as required in the claimed invention. Rather, Lepitre discloses using certain predetermined symbol rates and carrier frequencies compliant with the V.34-standard. In other words, Lepitre only chooses certain carrier frequencies out of a list defined in the V.34 standard. The instant invention, on the other hand, uses different transmission methods (e.g. different modulation methods) that are tested on the respective transmission line before the actual communication begins. This determination and storing occurs in a test setup, as described on page 6, for example, of the instant specification stating "the values stored in the tables for the comparisons are determined empirically with a wide variety of transmission procedures and line properties at different frequencies and frequency ranges in test rigs"). Lepitre, to the contrary, only uses predetermined values according to the V.34 standard, but does not create (determine and store) values for an table.

Claims 5-9 would be allowable if rewritten in independent form to include any base and intervening claims.

In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to withdraw the outstanding rejection of the claims and to pass this application to issue. If it is determined that a telephone conference would expedite the prosecution of this application, the Examiner is invited to telephone the undersigned at the number given below.

In the event the U.S. Patent and Trademark office determines that an extension and/or other relief is required, applicant petitions for any required relief including extensions of time and authorizes the Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to Deposit Account No. 03-1952 referencing docket no. 449122022600.

Dated: October 10, 2006

Respectfully submitted,

By 

Kevin R. Spivak

Registration No.: 43,148

MORRISON & FOERSTER LLP

1650 Tysons Blvd, Suite 300

McLean, Virginia 22102

(703) 760-7762